

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION

**AIG CLAIM SERVICES, INC.,
authorized representative of
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PENNSYLVANIA,**

Plaintiff,

v.

Case No. 5:03-2278

EDGAR W. FRIEDRICHES, JR.,

Defendants.

MEMORANDUM OPINION AND ORDER

Plaintiff filed its complaint on October 22, 2003 for a declaration establishing that plaintiff has no duty to defend nor indemnify defendant in Bell v. Board of Education of Fayette County (No. 5:03-0334) which was then pending in this court. (Doc. No. 1.) The Clerk entered default against defendant on December 15, 2003. There have been no filings by either party to this case since December 5, 2003. (See Doc. No. 7.)

Cases are not permitted to remain on the court's docket when parties do not pursue them. Rule 41(b) of the Federal Rules of Civil Procedure provides that "[for] failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action" Although the rule authorizes dismissal on motion of the defendant, it is settled law that the court may dismiss on its own motion. See Link v. Wabash R. Co., 370 U.S. 626, 633 (1962).

Rule 41(b) expressly recognizes the inherent power of the courts to dismiss suits for lack of diligence in bringing them to trial or otherwise pursuing resolution. Buxton v. Aero Mayflower Transit Co., 489 F.2d 754, 754 (4th Cir. 1974).

Given that it has been more than two years since any action has occurred in this case, plaintiff is **DIRECTED** to file, within thirty days of the date of this Memorandum Opinion and Order, a memorandum updating the court on the status of this case. If plaintiff fails to provide such a memorandum, the court may order the dismissal of this case with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. See Herbert v. Saffell, 877 F.2d 267, 270 (4th Cir. 1989) (discussing criteria relevant to a dismissal under Rule 41(b)).

The Clerk is directed to send a copy of this Memorandum Opinion and Order to all counsel of record and to any unrepresented party.

It is SO ORDERED this 30th day of March, 2006.

Enter:

David A. Faber

David A. Faber
Chief Judge